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No. 5100

IN THE

Supreme Court of the United States

EPIFONIO GARCIA, *et als.*,
Appellants,

vs.

BALBINO MORALES,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

JURISDICTIONAL STATEMENT.

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IN THE

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OCTOBER TERM, 1966

No. 5100

EPIFONIO GARCIA, *et als.*,

Appellants,

vs.

BALBINO MORALES,

Appellee.

On Appeal from the Supreme Court of the State of New Jersey.

JURISDICTIONAL STATEMENT.

Appellants appeal from the Judgment of the Supreme Court of the State of New Jersey entered June 6, 1966, Petition for Rehearing having been denied July 1, 1966, which Judgment affirmed a final Order of the Law (Trial) Division of the Superior Court of New Jersey and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question, meriting review, is presented.

OPINION BELOW.

The Opinion of the Supreme Court of New Jersey is reported in 47 N. J. 269, 220 A2d 198 (1966). No opinion was rendered by the trial court. The written Order, entered following oral denial of Appellant's motion, is attached hereto as Appendix B(1). The Opinion of the Supreme Court is annexed as Appendix B(2).

JURISDICTION.

An action in tort was brought against the uninsured motorist appellee, service having been made upon, and a defense having been undertaken by the New Jersey Unsatisfied Claim and Judgment Fund. Judgments were entered in favor of the four plaintiff-appellees in amounts totalling $85,000.00.

Pursuant to *New Jersey Revised Statutes* 39:6–69, motion was thereafter made to compel payment of the Judgments, subject to the $10,000 per capita limitation set forth in R. S. 39:6–69(a). An Order was entered by the Law Division of the Superior Court of New Jersey authorizing payment on a pro rata basis but limiting the aggregate payments to $20,000. An accordant Order was entered on July 1, 1965.

Appeal was taken by the Appellants to the Appellate Division of the Superior Court of New Jersey and, pending argument, was certified directly by the Supreme Court of New Jersey. The Judgment of the Supreme Court of New Jersey was entered June 6, 1966 and Petition for Rehearing, upon timely application, was denied July 1, 1966. A Notice of Appeal was filed in that Court on September 1, 1966.

The jurisdiction of the Supreme Court to review this decision is conferred by *Title 28, United States Code,* Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Williams* v. *Bruffy,* 96 U. S. 176, 24 L. Ed. 716 (1877); *Lathrop* v. *Donohue,* 367 U. S. 820, L. Ed. 2nd 1191, 81 S. Ct. 1826 (1961); *Largent* v. *Texas,* 318 U. S. 418, 87 L. Ed. 873, 63 S. Ct. 667 (1943); *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, 66 L. Ed. 239, 42 S. Ct. 106 (1921); and see particularly *Smith* v. *Cahoon,* 283 U. S. 553, 75 L. Ed. 1264, 51 S. Ct. 582 (1931).

QUESTION PRESENTED.

Where the State of New Jersey has created an Unsatisfied Claim and Judgment Fund for the benefit of innocent victims of uninsured motorists, which fund contains a limitation of $10,000.00 for any one person injured in any one accident, may the State constitutionally impose an additional aggregate limitation of $20,000.00 per accident, irrespective of the number of persons injured or the nature of their injuries?

STATUTES INVOLVED.

Revised Statutes of New Jersey, 39:6–69(b), 73, 84. R. S. 39:6–73, 84 are directly corollary provisions of R. S. 39:6–69 which, in its pertinent parts, provides:

> "When any person recovers a valid judgment . . . in this State, against . . . the operator . . . of a motor vehicle, for injury . . . and any amount remains unpaid thereon . . . such judgment creditor may . . . file a verified claim in the court in which judgment was entered and . . . apply for an Order directing payment out of the fund, if the amount unpaid upon such judgment . . . which . . . does not exceed
>
> (a) The maximum amount or limit of $10,000.00 . . . on account of injury to . . . 1 person in any one accident, and
>
> (b) The maximum amount or limit, subject to such limit for any 1 person so injured . . . of $20,000.00 . . . on account of injury to . . . more than 1 person, in any one accident".

(See Appendix A for Texts of Statutes.)

STATEMENT.

The Defendant, Morales, an uninsured New Jersey motorist, was the owner and operator of motor vehicle which was involved in a one car collision on February 22, 1964 in the State of New Jersey.

The Plaintiffs, Garcia, Ruiz, M. Morales and Pagan were passengers in the Morales vehicle and severally suffered severe trauma. Garcia and M. Morales were rendered unemployable by their injuries. Ruiz' primary injury was a dislocated hip. Pagan sustained scars and complete loss of vision in one eye.

A negligence complaint was filed and served upon both the Defendant, Morales and the Unsatisfied Claim and Judgment Fund Board. Following the introduction of proofs, final judgments were rendered against the Defendant Morales in the following amounts:

Garcia	$30,000.00
Ruiz	8,500.00
M. Morales	30,000.00
Pagan	16,500.00

No appeal was taken from the Judgment and it was ascertained that the same was uncollectible.

Thereafter, on motion and summary hearing, the Plaintiffs, upon a showing of statutory qualifications and entitlement (R. S. 39:6–62, 65, 70—not here at issue) sought the entry of an Order requiring payment out of the Unsatisfied Claim and Judgment Fund of the following sums to the named plaintiffs:

Garcia	$10,000.00
Ruiz	8,500.00
M. Morales	10,000.00
Pagan	10,000.00

In a Memorandum accompanying the Notice of Motion, Plaintiffs' first opportunity to plead in the trial court, the

federal questions herein presented were raised in the following manner:

> "The plaintiffs essentially sought the entry of an Order directing the individual payments noted immediately above, without regard to the limitations imposed by R. S. 39:6–73 (c) (2), or those expressed in R. S. 39:6–69 (b), on the ground that the limitations were prohibited by paragraphs 1 and 5 of Article I. of the New Jersey Constitution, 1947, and Amendment XIV, specifically:
>
> (1) The limitations constituted a denial of equal protection of the law to the plaintiffs.
> (2) The limitations are arbitrary, capricious and unreasonable and thus work a denial of due process.
> (3) The limitations imposed bear no real or substantial relationship to the objects sought to be obtained by the legislation and, hence, effect a denial of due process.
> (4) The classification inherent in the limitations is arbitrary and discriminatory and thus in derogation of the equal protection and due process sections cited". Appendix for Appellant (9a-29 to 10a-12).

In denying Plaintiffs' motion, the trial court ruled only inferentially on the questions raised.

An Order thereafter issued directing the Treasurer to pay "to . . . (the named Plaintiffs and their attorneys) . . . the sum of . . . $20,000.00 . . . representing the maximum amount or limit recoverable from the Fund, on account of injury to more than 1 person in any 1 accident". (Appendix for Appellant, 7a-6).

The following sums, inclusive of attorney's fees, were subsequently disbursed by the Treasurer to each named Plaintiff:

Garcia	$7,058.00
Ruiz	2,000.00
M. Morales	7,058.00
Pagan	3,882.40

This was intended to represent a pro rata distribution of the $20,000.00 provided by the Order and, by agreement, was made and accepted without prejudice to the rights of any party upon appeal.

Upon appeal to the Appellate Division, and upon Certification by the Supreme Court, the federal questions raised herein were presented in the Statement of Questions Involved (Plaintiffs' first appellate opportunity) in the following manner:

> "1. Are R. S. 39:6–69(b) and corollary $20,000.00 limitations of the Unsatisfied Claim and Judgment Fund Law unconstitutional by reason of their contravention of the equal protection and due process guaranties of the U. S. Constitution, Amendments V and XIV?
>
> 2. Are the inchoate rights of claimants under the Fund Law substantive rights within the protection of the United States Constitution, Amendment I and the New Jersey Constitution, 1947, Art. 1, para. 1?
>
> 3. Are such limitations unconstitutional as effecting a taking of property without compensation in violation of the provisions of the United States Constitution, Amendments V and XIV and the New Jersey Constitution, Art. 1, para. 20?
>
> 4. Do such limitations bear any reasonable relationship to the purpose of the legislation?
>
> 5. In the application of the Fund Law, remedial social legislation, does the word "accident" refer to accidental cause or accidental results?"

At oral argument, invitation was extended to submit such supplementary data as might aid the Court. Insurance data pertinent to private policies and risk or premium factors common in 5/10, 10/20, 20/40 and similarly limited private policies was submitted by the Appellants.

It was the essential holding of the Court, that the Plaintiffs were without standing to challenge the validity of the cited sections since they would gain nothing thereby and "we would be increasing the monetary liability of the Fund far beyond the limit intended by the Legislature".

See *Largent* v. *Texas, supra; Lawrence* v. *State Tax Commission,* 286 U. S. 276, 282-3; 76 L. Ed. 1102, 1107; 52 S. Ct. 556, 558 (1942).

The Petition for Rehearing was denied without opinion.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

The New Jersey Unsatisfied Claim and Judgment Law has, as its

> ". . . primary object . . . to provide a measure of relief for persons who sustain losses or injury inflicted by financially irresponsible or unidentified owners or operators of motor vehicles where such persons would otherwise be remediless". *Corrigan* v. *Gassert,* 27 N. J. 227, 142 A. 2d 209 (S. Ct. 1958).

Its financing and its operation clearly constitute "state action". The rights accruing to injured persons have been held to be "substantive right(s)". *Rudnick* v. *Bentler,* 66 N. J. Super. 224, 168 A. 2d 813 (App. Div. 1961).

This "state action" is limited by and these "substantive rights" are protected by the provisions of XIVth Amendment. It is manifest that the Legislature, in enacting the New Jersey Fund Law, literally lifted the familiar limiting provisions appearing in most private automobile liability policies, i. e., 5/10, 10/20, 20/40, etc., and inserted them in the legislation. The simple and important question which

arises in this case is whether or not, where state action is involved, the second or aggregate limitation is constitutionally repugnant. The import of this question is heightened when it is realized that an aggregate limitation achieves no single socially desirable goal.

A single example will illume the discriminatory and absurd results which inevitably flow from the aggregate limitation, albeit it is a familiar aspect of private insurance policies. Assume three infants on a sidewalk, each holding the other, are struck by a taxi which then regains the roadway and courses several hundred feet. It again leaves the roadway and strikes five pedestrians, having no common purpose, waiting to cross an intersection. Thereafter it strikes a pole, injuring two passengers. The cab is uninsured. All injured persons secure judgments in the amount of $10,000.00 each. If viewed as three separate accidents (see *In Re Carroll* v. *Furlong* (1955), 3 D. L. R. 279 (Newfoundland St. Ct.)), the infants, under the New Jersey Law, would receive $6,667.00 each; the pedestrians $4,000.00 each; the passengers $10,000.00 each. If the geographic proximity of the latter mishaps was held to constitute a single accident, the infants' recovery would remain the same, but passengers and pedestrians would each recover $2,859.00. Endless variations, each more absurd than the other, would serve further to point up the unreasonableness and arbitrary nature of the limitation.

Plenary hearing is respectfully requested on the constitutionality of such a statute for three primary reasons.

1.

The Continuing Enactment of Similar Legislation by Sister States Suggests the Need for Prompt Judicial Definition.

The concept of an Unsatisfied Claim and Judgment Fund Law appears to have originated in the Canadian Provinces. These statutes uniformly provide for both an individual and an aggregate limit on recovery. While cases factually similar to the case at bar have there arisen, no parallel con-

stitutional issues were presented. The reason would appear to be that the Dominion had no Bill of Rights until the recent enactment of the *Canadian Bill of Rights,* 8-9 Elizabeth II, Chap. 44. See particularly Part I, Para. I, Sec. a and b as to "due process, and equality before the law and the protection of the law".

The reported Canadian cases antedate the enactment of the Canadian Bill of Rights. Thus, in the absence of a supervening constitutional-type compact, the statutes have been followed literally, albeit with stated judicial reluctance and, in some cases, imagination productive of more just results. See *Klebanoff* v. *Price* (1949), 2 D. L. R. 575 (Ontario Ct. of App.); *Hopkins* v. *White* (1950), 4 D. L. R. 679 (Ontario H. C.); *King, et al.* v. *Wyman* (1959), 20 D. L. R. 2d 561 (NB S. Ct.); *In Re Carroll* v. *Furlong, supra; United Towns Electric Co. Ltd.* v. *Bishop* (1955), 5 D. L. R. 782 (Newfoundland S. Ct.).

In the United States, at the time of the hearing below, in addition to New Jersey, North Dakota and Maryland had enacted similar legislation, both with aggregate limits. "The Uninsured Motorist: A Look at the Various Uninsured Motorist Statutes," 15 *Western Reserve Law Review,* 386, 387; *North Dakota Century Code Annotated,* 39-17-07 (1963); *Annotated Code of Maryland,* Art. 66½ § 162 (1964). Since that time, similar legislation was enacted in *Michigan Statutes Annotated,* Section 9.2801-9.2831 (1965).

A related aspect of the general problem was treated and an extensive compilation of statutory references appears in *Kesler* v. *Department of Public Safety,* 369 U. S. 153, 7 L. Ed. 2d 641 82 S. Ct. 807 (1962).

The growth of such Funds, all with similar provisions born of private insurance policies and the Ontario prototype, suggests the need for judicial definition to avoid the multiple future repetition of inequities such as are here presented.

2.

The Decision Below Is Directly at Variance With Comparable Decisions of Courts of Last Resort.

As noted, this is the first case arising on the validity of an aggregate limitation where state action is concerned. However, two cases, directly contrary to the result below, are in point.

In *Smith* v. *Cahoon, supra,* this Court struck down an arbitrary classification in a comparable Florida statute which sought to insulate from the onus of compulsory insurance certain agricultural and seafood commercial shippers. A fortiori, just as it was not possible to justify a different treatment of the public when struck by a coffee-carrying truck as opposed to a shrimp-carrying vehicle, so also is impossible constitutionally to justify a differentiation between members of the public singly injured or injured in multiples.

Directly in point is the decision of the Supreme Court of Iowa in *Collins* v. *State Board of Social Welfare,* 248 Iowa 369, 81 NW 2d 4 (1957). There, the Legislature undertook to limit grants of aid to dependent children where several children might be living in the homes of enumerated relatives, as contrasted with dependent children not so housed.

> "The Amendment on its face appears to be, and was, we think, intended as an economy measure. In effect, it is a sub-classification of the original classification, i. e., dependent children, based solely upon the number of children in the home, with no consideration as to need, a circumstance completely disconnected with the basic classification and the purpose and reason therefore . . . We think the amendment is clearly discriminatory between dependent children as defined in Section 239.1(4) and is purely arbitrary and unreasonable in view of the announced purpose of the Act".

3.

New Jersey Revised Statutes 39:6-69(b) Is Unconstitutional on Its Face.

The aggregate limits appearing in private insurance policies are presumably designed to protect other policyholders against company insolvency in the event of catastrophe loss. They are also compelled by a rather standard statutory provision in most state insurance laws which limits exposure on any one risk to a percentage of net assets. In New Jersey, the limitation, for example, is 10%. *New Jersey Revised Statutes,* 17:18–9. As a general rule however,

> "Liability insurers have the same rights as individuals to limit their liability and to impose whatever conditions they please on their obligations, provided they are not in contravention of statutory inhibitions or public policy. *Appleman Insurance Law and Practice,* Vol. 7, § 4255, p. 17.

A state legislature, on the other hand, is not free to enter into such engagement as it may choose. By seeking to limit the liability of the Unsatisfied Claim and Judgment Fund on an aggregate basis, in the same manner as private insurers, the State Fund operates, whenever three or more persons are injured in a way barred by familiar constitutional concepts.

a.

Denial of Due Process for Lack of Reasonableness.

While the Fund exists for the sole purpose of protecting the innocent victims of uninsured motorists, the aggregate limitation bears no reasonable relationship, indeed no relationship to this end. While affording full "coverage" to 1 or 2 persons injured in a single accident, it effects reduced "coverage" to individuals in only the most serious accidents where the needs of the victims and the needs of the

community are the greatest. The suggestion of the Court below that the aggregate limitation operates to limit the exposure of the Fund or facilitate its solvency is not a defensible goal. This is but another way of saying that only those involved in multi-injury accidents, must forego standard benefits in order to protect persons not yet in the beneficiary class or, persons identically situate who happen to have been injured singly.

b.

Denial of Due Process by Reason of Deficient Classification.

The classification, upon which entitlement to maximum benefit rests, is 1 or 2 persons injured vs. 3 or more persons injured. Within the latter class, persons are benefited in inverse ratio to the number involved. Both classes arise, not by reason of any rational choice, but merely because of the pure chance that a given collision injures many, rather than few, or the reverse. Such is the "classification" imposed by an aggregate limit.

c.

Denial of Equal Protection.

The Fund law creates no "standard benefit" for injured victims of uninsured motorists as a class, but rather treats unequally of those within this class even though there be identity of injury and identity of damage. This situation is more offensive than that discussed in *Collins* v. *State Board of Welfare, supra,* where there was at least a familial relationship, not present here.

d.

Taking of Property Without Just Compensation.

In the instant case, and indeed, in any serious multi-injury case, the limitations of R. S. 39:6–69(b) require a race for the funds, or a pro-ration as was done here. In

the former event, one sees a most startling denial of equal protection, dependent almost solely upon court calendars or other extraneous factors having utterly no relationship to the ends of the statute. In the latter event, the monies available to A, are decreased solely to make funds available to B, C and D, persons wholly foreign to A, or to A's circumstances. In short, his substantive interest in, or inchoate right to, property is taken, *pro tanto*, in order to enable a governmental use of such funds, viz., benefiting B, C and D. Obviously, the taking is without compensation, just or otherwise.

CONCLUSION.

It is submitted that the use of aggregate limits of liability are invalid and constitutionally repugnant when employed in "state action". No similar case, directly ruling on this question, appears to have been decided by this Court. The growing use of the aggregate principle in state legislation affecting the rights of great numbers of automobile accident victims suggests the need for present decision. The questions presented by this appeal are substantial and of public importance.

Respectfully submitted,

EDWARD B. MEREDITH.

APPENDIX A.

39:6–69. Application for payment of judgment

When any qualified person recovers a valid judgment in any court of competent jurisdiction in this State, against any other person, who was the operator or owner of a motor vehicle, for injury to, or death of, any person or persons, or a similar valid judgment in such court against such a defendant for an amount in excess of $100.00, exclusive of interest and costs, for damages to property, except property of others in charge of such operator or owner or such operator's or owner's employees, arising out of the ownership, maintenance or use of the motor vehicle in this State on or after April 1, 1955, and any amount remains unpaid thereon in the case of a judgment for bodily injury or death, or any amount in excess of $100.00 remains unpaid thereon in case of a judgment for damage to property, such judgment creditor may, upon the termination of all proceedings, including reviews and appeals in connection with such judgment, file a verified claim in the court in which the judgment was entered and, upon 10 days' written notice to the board may apply to the court for an order directing payment out of the fund, of the amount unpaid upon such judgment for bodily injury or death, which does not exceed, or upon such judgment for damage to property which exceeds the sum of $100.00 and does not exceed—

(a) The maximum amount or limit of $10,000.00, exclusive of interest and costs, on account of injury to, or death of, 1 person, in any 1 accident, and

(b) The maximum amount or limit, subject to such limit for any 1 person so injured or killed, of $20,000.00, exclusive of interest and costs, on account of injury to, or death of, more than 1 person, in any 1 accident, and

(c) The maximum amount or limit of $5,000.00, exclusive of interest and costs, for damage to property in any 1 accident. L. 1952, c. 174, p. 576, § 9; L. 1958, c. 99, p. 557, § 3.

• • •

39:6–73. Limitation on amounts payable from fund

No order shall be made for the payment, and the treasurer shall make no payment, out of the fund, of

(a) Any claim for damage to property for less than $100.00.

(b) The first $100.00 of any judgment for damage to property or of the unsatisfied portion thereof, or

(c) The unsatisfied portion of any judgment which, after deducting $100.00 therefrom if the judgment is for damage to property, exceeds

(1) the maximum or limit of $10,000.00, exclusive of interest and costs, on account of injury to, or death of, 1 person in any 1 accident, and

(2) the maximum amount or limit, subject to such limit for any 1 person so injured or killed, of $20,000.00, exclusive of interest and costs, on account of injury to, or death of, more than 1 person, in any 1 accident, and

(3) the maximum amount or limit of $5,000.00, exclusive of interest and costs, for damages to property in any 1 accident, Provided, that such maximum amounts shall be reduced by any amount received or recovered as specified in subparagraph (m) of section 10.[1]

(d) Any claim for damage to property which includes any sum greater than the difference between said maximum amounts and the sum of $100.00, and any amount paid out of the fund in excess of the amount so authorized may be recovered by the treasurer in an action brought by him against the person receiving the same. L. 1952, c. 174, p. 582, § 13; L. 1958, c. 99, p. 560, § 5.

* * *

39:6–84. Judgment against director

When a judgment is obtained against the director, in an action brought under this act, upon the determination of all proceedings including appeals and reviews, the court shall make an order directed to the treasurer directing him to pay out of the fund to the plaintiff in an action the amount thereof which does not exceed $10,000.00, exclusive of

interest and costs, on account of injury to, or death of, 1 person and, subject to such limits for the death of, or injury to, any 1 person, does not exceed $20,000.00, exclusive of interest and costs, on account of the injury to, or death of, more than 1 person, in any 1 accident, provided that such maximum amount shall be reduced by any amount received or recovered by the plaintiff as specified in subparagraph (m) of sections 10.[1] L. 1952, c. 174, p. 588, § 24; L. 1955, c. 1, p. 23, § 15; L. 1958, c. 99, p. 562, § 8.

• • •

APPENDIX B.

(1)

ORDER TO PAY OUT OF THE UNSATISFIED CLAIM AND JUDGMENT FUND.

The within matter having been presented to the Court by Meredith and Meredith, Esquires, Regina H. Meredith, Esquire, appearing, attorneys for the Plaintiffs, in the presence of Jamieson, Walsh & McCardell, Esquires, Edward McCardell, Esquire, appearing, attorneys for the Defendant, upon notice to the Fund, pursuant to N. J. S. A. 39:6–69, the Court being satisfied that the matters stated in Plaintiffs' verified claim are true and the Plaintiffs have no cause of action for the damages claimed against any person other than the Defendant in this suit:

It is, on this 2nd day of July, 1965, ORDERED that the Treasurer of the State of New Jersey pay to Epifonio Garcia, Juan Comacho Ruiz, Migdonio Morales and Andre Leon Pagan, the Plaintiffs herein, and their attorneys, Meredith and Meredith, Esquires, the sum of Twenty Thousand Dollars ($20,000.00), together with costs of suit, representing the maximum amount or limit recoverable from the Fund, on account of injury to more than 1 person in any 1 accident.

/s/ GEORGE H. BARLOW,
GEORGE H. BARLOW, *J. S. C.*

APPENDIX B.

(2)

OPINION.

The opinion of the Court was delivered PER CURIAM.

This proceeding involves an attack on the constitutionality of *N. J. S. A.* 39:6–69(*b*), (and *N. J. S. A.* 39:6–73 and 84 which are related to and dependent upon *N. J. S. A.* 39:6–69(*a*) and (*b*)) of the Unsatisfied Claim and Judgment Fund Law, *N. J. S. A.* 39:6–61 *et seq.* Section 69(*a*), which is not assailed, provides for payment by the Unsatisfied Claim and Judgment Fund up to a maximum of $10,000, exclusive of interest and costs, of a judgment recovered by one person injured in any one accident through the negligence of an uninsured automobile driver. Section 69(*b*) provides:

> "The maximum amount or limit, subject to such limit for any 1 person so injured or killed, of $20,000.00, exclusive of interest or costs, on account of injury to, or death of, *more than 1* person, in any 1 accident, * * *." (Emphasis added.)

The four plaintiffs, passengers in an uninsured automobile driven by an uninsured driver, were injured in a single accident. They recovered judgments totaling $85,000, only one of them for an amount under $10,000, it being for $8,500. Three of the plaintiffs whose individual judgments exceeded $10,000 demanded $10,000 each from the Fund; the third sought $8,500. The Fund refused such payments, ruling that collectively the four plaintiffs were entitled under *N. J. S. A.* 39:6–69(*b*) to a total amount of $20,000, that sum to be prorated among them.

The ruling of the Fund was concurred in by the Superior Court, Law Division, and we certified the ensuing appeal therefrom before it was heard in the Appellate Division.

Plaintiffs contend that section 69(b) is unconstitutional because the limitation imposed thereby denies them equal protection of the law and discriminates against them in

violation of the Federal and State Constitutions, and more particularly, the Fourteenth Amendment of the United States Constitution. They urge that since one person injured in one accident can recover $10,000 from the Fund under section 69(*a*), to limit the recovery of four persons, as section 69(*b*) purports to do, to a collective amount of $20,000 in one accident is to treat them unequally and to discriminate against them in the sense prohibited by the Constitution.

Plaintiffs accept the constitutionality of section 69(*a*), and make no challenge as to its validity. In fact the thesis of their case is that when section 69(*b*) is excised from the statute as unconstitutional, section 69(*a*) remains as the basis for recovery of $10,000 each, by three of them and for $8,500 by the fourth. In support of such result they contend that section 69(*a*) should be construed to create a benefit up to $10,000 for each person injured, no matter how many persons are injured, so long as all of them are injured in one accident.

As is the practice when constitutionality of a statute is attacked, we limit our consideration of the challenge to the precise basis on which it is presented. So considered, obviously plaintiffs position cannot be sustained. It is clear beyond reasonable doubt that the Legislature intended section 69(*a*) to relate only to the situation where one person is injured in one accident, and to provide a maximum recovery of $10,000 for such person. If we were to strike down section 69(*b*) alone and then construe section 69(*a*) as plaintiffs would have us do, not only would we be disregarding the plain language of the statute, but also we would be increasing the monetary liability of the Fund far beyond the limit intended by the Legislature. The judicial branch of the government has no such power.

Under the circumstances, since section 69(*a*) is not susceptible of the interpretation urged by plaintiffs, they would gain nothing by an invalidation of section 69(*b*). *Cf. State* v. *Rush*, 46 *N. J.* 399, 409 (1966). Consequently there is no occasion to deal further with the constitutional argument. Accordingly the order of the Law Division is affirmed.